IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1535 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KANTABEN RASIKBHAI PATEL

Versus

RASIKBHAI HARIBHAI PATEL

Appearance:

MR RM PARMAR for Petitioner No. 1

MR CM PATEL for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 05/09/2002

ORAL JUDGEMENT

This matter is called out twice and no one remains present. Hence, this application is dismissed for default.

mandora. [K.A. Puj, J.]

After the above order is passed, Mr. R.M. Parmar,

the ld. advocate appearing for the applicant made a request for restoration of this application and on his oral request this MCA is restored to file and heard on merits.

2. The present Misc. Civil Application is filed for transfer of Hindu Marriage Petition No. 314/97 filed by the opponent from the Court of Civil Judge (SD), Vadodara, to the Court of Civil Judge (SD), Jamnagar. It has been stated by the applicant that she is poor, helpless and deserted wife of the opponent and that it is not physically possible for her to visit Vadodara to contest the aforesaid Hindu Marriage Petition filed by the opponent, on every adjournment. It has been further stated that her presence in the Court is very essential and that if she does not remain present in the Court on every adjournment, the Court may decide the matter ex-parte and it would cause great injustice to her. It has been further stated that she has already filed maintenance application as well as criminal complaint for the offence punishable under Section 498 of the Indian Penal Code on 5.12.1997 before the City Division Police Station, Jamnagar, alleging illtreatment, harassment and demand of dowry from the applicant by the opponent. It is further submitted that the opponent is serving in GIDC Vadodara, and is earning handsome salary and it may not be difficult for him to attend the hearing at Jamnagar after the same is transferred from Vadodara. In this background of the matter, the present application is filed seeking transfer of HMP No. 314/97 from the Court of Civil Judge (SD), Vadodara to the Court of Civil Judge (SD), Jamnagar.

3. Heard Mr. R.M. Parmar, ld. advocate appearing for the applicant. He has contended that looking to the facts and circumstances of the case the present application is required to be allowed. He has further relied on the decision of the Hon'ble Supreme Court in the case of Seema v. Rakesh Kumar, 2000 SCC (Cri.) 1503, wherein also the Hon'ble Supreme Court was concerned with the transfer petition filed by wife. In that case, the wife sought the transfer of the proceedings for restitution of conjugal rights filed by the husband in Ghaziabad (U.P.) to Jagadhri (Haryana) where she was residing. It was the case of the wife that she could not defend the case in Ghaziabad effectively as she was dependent on her father. The maintenance petition that was filed was pending and it was pending in the court at Jagadhri. The said transfer petition was opposed by the opponent husband on the ground that since she has filed her appearance in the matrimonial proceedings at

Ghaziabad her claim of lack of finance and other inability to defend those proceedings is incorrect. On those facts the Hon'ble Supreme Court has held that the wife could not have permitted the petition for restitution of conjugal rights to go undefended before she filed the transfer petition. The Hon'ble Supreme Court has further taken note of the fact that as the wife is not getting maintenance from the husband her financial difficulties are established. After considering those facts, the Hon'ble Supreme Court was pleased to allow the transfer petition and passed the order with regard to transfer of Case No. 1035 of 1999 pending in the Court of the Civil Judge, (SD), Ghaziabad to the Court of the Senior Judge, Jagadhri (Haryana).

4. The facts on hand are also more or less similar to the facts of the case before the Hon'ble Supreme Court and here also the transfer petition is moved by the wife on the ground of financial difficulties. The opponent-husband has filed the H.M.P. for restitution of conjugal rights at Baroda whereas the applicant-wife is residing at Jamnagar and maintenance application as well as proceedings under Section 498A of the IPC were also initiated at Jamnagar. In this view of the matter, the request for transfer of Hindu Marriage Petition from Baroda to Jamnagar is required to be accepted.

5. Having regard to the facts and circumstances of the case and after hearing the ld. advocate for the applicant, I am of the view that this Misc. Civil Application is required to be allowed and hence it is allowed. Rule is made absolute with no order as to costs. The H.M.P. No. 314 of 1997 pending in the Civil Court (SD), Baroda, may be transferred to the Court of Civil Judge (SD), Jamnagar, forthwith.

6. Rule is made absolute with no order as to costs.

rmr. [K.A. Puj, J.]